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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,838	10/26/2001	Barbara J. Bolle	98-1130CON	5054

7590 05/17/2002

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EXAMINER

FULTON, CHRISTOPHER W

ART UNIT PAPER NUMBER

2859

DATE MAILED: 05/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/014,838

Applicant(s)

BOLLE, BARBARA J.

Examiner

Christopher W. Fulton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

In this instance reference to the parent application is missing.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marcussen.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcussen in view of Hornig.

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The device as claimed is disclosed by Marcussen as stated in the rejection recited above of claim 1, but lacks a second scale on the opposite edge of the device for a different shaped bottle. Hornig teaches using a second scale on an opposite edge from a first scale of a measuring device for a second different type measurement to save room by having two useful scales on one device instead of having two separate devices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place a second scale with a second shaped edge for a second standard shaped bottle on the second edge of Marcussen as taught by Hornig to have a second useful scale on the opposite side of the first scale to save room by having two scales on one device instead of having two separate devices.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcussen in view of McDermott.

The device as claimed is disclosed by Marcussen as stated in the rejection recited above of claim 1, but lacks a display area on the top of the device for advertisement purposes. McDermott teaches using display area on the top of a measuring device to indicate what the device is for and for advertising purposes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a display area on the top of the device of Marcussen as taught by McDermott to indicate what the scale is for or for advertising purposes.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcussen.

The device as claimed is disclosed by Marcussen as stated in the rejection recited above of claim 1, but lacks a plurality of the devices for different shaped bottles. Duplication of existing parts is not considered patentably distinct. Therefore, it would have been obvious to one of

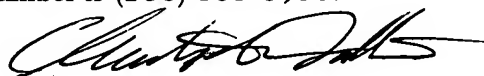
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ordinary skill in the art at the time the invention was made to have a plurality of the devices of Marcussen for various differently shaped bottles as a mere duplication of the gauge of Marcussen shaped to a specific bottle that is desired to be measured.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (703) 308-3389. The examiner can normally be reached on M,T,Th,F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Christopher W. Fulton
Primary Examiner
Art Unit 2859

CWF
May 16, 2002